

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VINH H. NGUYEN,

Petitioner,

v.

ANTHONY KANE, Warden,

Respondent.

No. C 00-4608 CRB

**CERTIFICATE OF APPEALABILITY**

Now before the Court is petitioner's request for issuance of a certificate of appealability ("COA"). A judge shall grant a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate must indicate which issues satisfy this standard, see id. § 2253(c)(3), and the court of appeals is limited to considering only those claims. See Hiivala v. Wood, 195 F.3d 1098, 1103 (9th Cir. 1999); Fuller v. Roe, 182 F.3d 699, 702-03 (9th Cir. 1999).

"Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 120 S.Ct. 1595, 1604 (2000).


Section 2253(c)(2) codified the standard announced by the United States Supreme Court in Barefoot v. Estelle, 463 U.S. 880, 892-93 (1983). In Barefoot, the Court explained that "a substantial showing of the denial of [a] federal right" means that a petitioner "must

1 demonstrate that the issues are debatable among jurists of reason; that a court could resolve  
2 the issues [in a different manner], or that the questions are adequate to deserve  
3 encouragement to proceed further.” Id. at 893 n.4 (citations and internal quotations omitted;  
4 emphasis in original).

5 Here, the Court concludes that petitioner has made a “substantial showing” of denial  
6 of a constitutional right with respect to his claim that his petition should be reopened  
7 pursuant to Rule 60(b)(6) in order to pursue his ineffective assistance of counsel claim under  
8 the Sixth Amendment and the Due Process Clause.

9 **IT IS SO ORDERED.**

10  
11 Dated: January 6, 2006

  
\_\_\_\_\_  
CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE

United States District Court

For the Northern District of California